MALAYSIAN BAR

v.

DATO' KANAGALINGAM VELUPPILLAI

FEDERAL COURT, PUTRAJAYA
PS GILL FCJ
RAHMAH HUSSAIN FCJ
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: 02-19-2003 (W)]
24 AUGUST 2004

LEGAL PROFESSION: *Professional discipline - Right to appeal - Appeal to High Court from decision of disciplinary board - Decision of disciplinary board to appoint investigating tribunal - Not a final decision on the merits of complaint against advocate and solicitor - Whether decision appealable - Whether only final decision appealable - Whether 'any decision' is appealable - Legal Profession Act 1976, s. 103E(1) - Whether plain and unambiguous - Whether must be interpreted literally*

LEGAL PROFESSION: *Professional discipline - Disciplinary board - Members and quorum - Disqualification of President of Malaysian Bar as member of board when Malaysian Bar is the complainant - Whether President present at board meeting - Whether presence may be presumed if board refuses to disclose names of members who attended meeting - Whether composition of board lawful if President presumed to be present - Whether rules of natural justice eschewed - Whether decision of board to appoint investigating tribunal void ab initio - Legal Profession Act 1976, s. 93(3) - Legal Profession (Disciplinary Board) (Procedure) Rules 1994, r. 4(1) - Evidence Act 1950, s. 114(g)*

STATUTORY INTERPRETATION: *Construction of statutes - Literal approach - Whether must be applied strictly if words of statute are plain and unambiguous - Purposive approach - When may be used - Whether only when application of literal rule leads to uncertainty - Legal Profession Act 1976, s. 103E(1) - Whether must be construed literally - Whether amenable to purposive interpretation*

The Malaysian Bar ('the Bar') had earlier lodged two complaints against one of its own members, one Dato' Kanagalingam Veluppillai ('Dato' Lingam'). The letters of complaint to the Disciplinary Board ('the Board') were signed by the President of the Malaysian Bar ('the President of the Bar'). Having met, the Board decided that there were merits in the complaints and sought to constitute an Investigating Tribunal ('the Tribunal') under s. 100(1) of the Legal Profession Act 1976 ('the LPA'). Upon being notified of this, Dato' Lingam wrote to the Board requesting copies of the 'attendance sheet' in respect of the members who had attended the said meeting as well as the minutes of the meeting. Dato' Lingam's request was refused and he brought an appeal before the High Court under s. 103E of the LPA against the decision of the Board to appoint the Tribunal. At the hearing, counsel for the Bar raised the preliminary objection that the High Court had no jurisdiction to entertain the appeal from the decision of the Board to appoint the Tribunal as such a decision was not a final decision on the merits of the complaints. The High Court dismissed the preliminary objection, holding that "any decision" of the Board would be appealable to the High Court under s. 103E(1) of the LPA, and that the decision of the Board to appoint the Tribunal was one such decision.

The justices of the High Court then went on to hold that because the Board had refused to reveal the names of its members who had attended the said meeting, a presumption could and had to be invoked (under s. 114(g) of the Evidence Act 1950) that the President of the Bar was present at the said meeting. The presence (although only presumed) of the President of the Bar, it was held, had rendered the composition of the Board unlawful because the Bar was the complainant in this case and the President of the Bar was disqualified as a member of the Board, and from attending the said meeting, by virtue of r. 4(1) of the Legal Profession (Disciplinary Board) (Procedure) Rules 1994. The High Court thus held that the Board had offended the rules of natural justice and that the decision of the Board to constitute the Tribunal was *void ab initio.*

Held (dismissing the appeal)
Per Hashim Yusoff JCA delivering the judgment of the Federal Court:

[1] The words of s. 103E(1) of the LPA are crystal clear, namely, that, "Any party aggrieved by any decision or order made by a Disciplinary Board shall have the right to appeal to the High Court … ." There is absolutely no ambiguity here. Where the words of a statute are plain, precise and unambiguous, the literal and strict rule of construction must be applied. The purposive approach to statutory interpretation should not be adopted unless doubts have arisen from the words employed by the Legislature.

(*Wong Pot Heng v. Zainal Abidin Putih & Anor* [1990] 1 CLJ 312 (Rep) followed; *Duport Steels Ltd & Ors v. Sirs & Ors* [1980] 1 WLR 142 followed.) The High Court was therefore right in its holding on the jurisdictional point, namely, that it had the jurisdiction to hear Dato' Lingam's appeal. (p 200 c-h)

[2] The High Court was justified in making the statutory presumption that the 'attendance sheet' (which could have been, but was not, produced) would, if produced, be unfavourable to the Board. The Board should have disclosed the names of its members who had attended the said meeting; its refusal to do so had given rise to the presumption that the President of the Bar or his alternate was present at the said meeting, and this, in turn, had rendered the quorum of the Board unlawful and any decision made pursuant to the said meeting *void ab initio*. (pp 201 a-h & 202 a-b)

*[**Bahasa Malaysia** Translation Of Headnotes*

Majlis Peguam Malaysia ('Majlis Peguam') telah memfail dua aduan terhadap salah seorang dari ahlinya, seorang Dato' Kanagalingam Veluppillai ('Dato' Lingam'). Surat-surat aduan kepada Lembaga Disiplin ('Lembaga') telah ditandatangani oleh Presiden Majlis Peguam Malaysia ('Presiden Majlis Peguam'). Setelah bermesyuarat, Lembaga berpendapat bahawa terdapat merit pada aduan-aduan dan dengan itu mengambil langkah untuk menubuhkan Tribunal Penyiasatan ('Tribunal') di bawah s. 100(1) Akta Profesion Undang-Undang 1976 ('LPA'). Apabila diberitahu mengenainya, Dato' Lingam menulis kepada Lembaga memohon salinan 'lampiran kehadiran' berkaitan ahli-ahli yang menghadiri mesyuarat tersebut beserta dengan minit-minit mesyuarat. Permohonan Dato' Lingam telah ditolak dan beliau telah memfail rayuan ke Mahkamah Tinggi di bawah s. 103E LPA terhadap keputusan Lembaga melantik Tribunal. Di pendengaran, peguam Majlis Peguam membangkitkan bantahan awal bahawa Mahkamah Tinggi tidak berbidang kuasa untuk melayani rayuan terhadap keputusan Lembaga melantik Tribunal, oleh kerana keputusan tersebut bukanlah suatu keputusan muktamad di atas merit aduan. Mahkamah Tinggi menolak bantahan awal, dengan menyatakan bahawa "apa-apa keputusan" Lembaga adalah boleh dirayu ke Mahkamah Tinggi di bawah s. 103E(1) LPA, dan bahawa keputusan Lembaga melantik Tribunal adalah satu keputusan sedemikian.

Hakim-hakim Mahkamah Tinggi juga mendapati bahawa oleh kerana Lembaga enggan mendedahkan nama-nama ahlinya yang menghadiri mesyuarat tersebut, maka suatu anggapan boleh dan harus dibuat (di bawah s. 114(g) Akta Keterangan 1950) bahawa Presiden Majlis Peguam telah hadir di mesyuarat itu. Diputuskan selanjutnya bahawa kehadiran Presiden Majlis Peguam

(walaupun hanya andaian), telah menyebabkan komposisi Lembaga menjadi tak sah oleh kerana Majlis Peguam adalah pengadu dalam kes ini dan Presiden Majlis Peguam hilang kelayakan sebagai seorang ahli Lembaga dan untuk menghadiri mesyuarat tersebut berpandukan k. 4(1) Kaedah-Kaedah Profesion Undang-Undang (Lembaga Disiplin) (Prosedur) 1994 ('Kaedah-Kaedah DBP'). Mahkamah Tinggi dengan itu memutuskan bahawa Lembaga telah melanggar prinsip-prinsip keadilan asasi dan bahawa keputusan Lembaga untuk menubuhkan Tribunal adalah *void ab initio.*

Diputuskan (menolak rayuan)
Oleh Hashim Yusoff HMR menyampaikan penghakiman Mahkamah Persekutuan:

[1] Perkataan-perkataan s. 103E(1) LPA adalah amat jelas, iaitu, bahawa, "mana-mana pihak yang terkilan dengan mana-mana keputusan atau printah yang dibuat oleh Lembaga Disiplin mempunyai hak untuk merayu ke Mahkamah Tinggi ... ." Tidak ada sebarang keraguan di sini. Di mana perkataan-perkataan sesuatu statut itu jelas, tepat dan tidak kabur, pentafsiran secara ketat dan literal hendaklah dibuat. Pendekatan secara purposif tidak harus digunakan kecuali jika terdapat keraguan-keraguan pada perkataan-perkataan yang digunakan oleh *Badan Perundangan (Wong Pot Heng v. Zainal Abidin Putih & Anor* [1990] 1 CLJ 312 (Rep) followed; *Duport Steels Ltd & Ors v. Sirs & Ors* [1980] 1 WLR 142 followed.) Mahkamah Tinggi dengan itu betul dalam keputusannya berkaitan soal bidang kuasa, iaitu, bahawa ia mempunyai bidang kuasa untuk mendengar rayuan Dato' Lingam.

[2] Mahkamah Tinggi mempunyai justifikasi untuk membuat anggapan statutori bahawa 'lampiran kehadiran' (yang boleh, tetapi tidak, dikemukakan), jika dikemukakan, tidak akan berpihak kepada Lembaga. Lembaga sepatutnya mendedahkan nama-nama ahli-ahlinya yang menghadiri mesyuarat tersebut; keengganannya berbuat demikian telah membangkitkan anggapan bahawa Presiden Majlis Peguam atau yang menggantinya telah hadir di mesyuarat itu, dan ini, sekaligus menyebabkan korum Lembaga menjadi tidak sah dan apa jua keputusan yang dibuat dalam mesyuarat tersebut *void ab initio.*

Case(s) referred to:
Duport Steels Ltd & Ors v. Sirs & Ors [1980] 1 WLR 142 ***(foll)***
DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor [2002] 2 CLJ 57 FC ***(refd)***
Ngeow Yin Ngee v. Majlis Peguam Malaysia [2004] 5 CLJ 467 HC ***(refd)***
Palm Oil Research & Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***
Wong Pot Heng v. Zainal Abidin Putih [1990] 1 MLJ 410 ***(foll)***

Legislation referred to:
Evidence Act 1950, s. 114(g)
Interpretation Acts 1948 and 1967, ss. 17A, 103E
Legal Profession Act 1976, ss. 100(1), 103E(1)
Legal Profession (Disciplinary Board) (Procedures) Rules 1994, r. 4(1)

For the appellant/Malaysian Bar - Bastian Vendargon (T Gunaseelan & Asha Anandan); M/s Vendargon & Partners
For the respondent/Dato' Kanagalingam Veluppillai - V Sivaparanjothi (KT Wong & VK Lashmi); M/s Siva & Partners

[Appeal from High Court; Civil Appeal No: R-17B-157-2002]

Reported by Gan Peng Chiang

JUDGMENT

Hashim Yusoff JCA:

This is an appeal by the Malaysian Bar against the decision of the High Court consisting of three judges given on 17 November 2003 which had allowed the respondent's appeal with costs against the decision of the Disciplinary Board (DB). After hearing the submissions by the respective counsel for the appellant and the respondent, we reserved our judgment to be given at a later date. We now give our judgment.

At the outset of this appeal, the appellant had filed a notice of motion to amend the Memorandum of Appeal to include two additional grounds of appeal with costs of the application to be costs in the cause of the appeal. This motion was not objected to by the respondent. We therefore allowed the said application accordingly.

Background

The appellant had lodged two complaints against the respondent with the Disciplinary Board (DB) vide its letter dated 6 August 2002 (refer p. 118-119 of Appeal Record Vol. I). The DB on 21 November 2002 *vide* its letter had "determined that there was merit in the said complaint and decided to constitute an Investigating Tribunal (IT) to enquire into the said complaint". The said DB letter was communicated to the respondent on 25 November 2002. The respondent then filed an appeal to the High Court against the said decision of the DB pursuant to s. 103E of the Legal Profession Act 1976 ("the LPA"). The High Court consisting of three judges allowed the respondent's appeal with costs on 17 November 2003. Now the appellant is appealing against the said decision of the High Court.

The submission of learned counsel for the appellant can be summarised as follows:

1) that the court has no jurisdiction to entertain an appeal from the decision of the DB to appoint an investigating tribunal to investigate and report as such decision is not a final but merely a preliminary decision;

2) that the respondent's alleged breaches of natural justice and bias by the DB are unfounded since no records regarding the same, nor any evidence either by affidavit or *viva voce* had been produced before the court.

Issue Regarding Jurisdiction

To support his argument, the appellant's counsel had among others, referred to two Federal Court cases *viz*:

1. *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd. & Anor* [2002] 2 CLJ 57

2. *Palm Oil Research & Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn. Bhd.* [2004] 2 CLJ 265

whereby, *inter alia*, it was held that it was clear beyond doubt that s. 17A of the Interpretation Acts 1948 and 1967 is a statutory recognition for the courts to take a purposive approach in the interpretation of statutes including taxing statutes.

The instant appeal centers primarily around the wordings of s. 103E of the Legal Profession Act which provides as follows:

> Any party aggrieved by any decision or order made by a Disciplinary Board shall have the right to appeal to the High Court within one month of notification of the decision or order complained against.

Learned counsel for the appellant submitted that a purposive approach to s. 103E should be given as provided by s. 17A of the Interpretation Acts 1948 and 1967, which reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

Learned counsel for the respondent in response submitted that a literal interpretation of the said section should be given since the wordings of the said section are very clear.

In the case of *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor, supra* it was held *inter alia* that "In order to resolve the ambiguity caused by the interpretation, it was necessary to consider the purpose or object of establishing the Special Courts ...".

We also noted that in the *Palm Oil Research* case, *supra*, the Federal Court had recognised that there was an ambiguity in determining the distinction between the seed and the kernel of the oil palm. In order to resolve such ambiguity, the court adopted the purposive approach in the interpretation of statutes as provided by s. 17A of the Interpretation Act.

In the case of *Wong Pot Heng v. Zainal Abidin Putih* [1990] 1 MLJ 410, his Lordship Mohamed Azmi SCJ in delivering the judgment of the Supreme Court at p. 414 said:

> The purposive construction of statutes was first adopted by the House of Lords in the *Fothergill v. Monarch Airlines*. It is a well established principle that the purposive approach to the interpretation of legislation only applies where any doubt arises from the terms or words employed by the legislature. But where the words are precise and unambiguous, then the literal and strict construction rule should apply.

And further, his Lordship said:

> we cannot read or imply into the laws a provision that depositors must be given priority over other creditors. Indeed, the speech of Lord Goddard CJ in *R v. Wimbledon Justices, ex p Derwent* at p 384, relied on by counsel, that the court 'cannot add words to a statute or read words into it which are not there', and the statement of Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commissioners* at p 71 that 'nothing is to be read, nothing is to be implied; one can only look fairly at the language used', lend support to what we have adverted to earlier, that where the words used by the legislature are clear, the purposive approach to interpretation of legislation must not be adopted. The court must stick to the plain meaning of the words used.

Reading the wordings of s. 103E of the Legal Profession Act we are of the view that there is no ambiguity therein, since the wordings used are "Any party aggrieved by any decision or order made by the Disciplinary Board shall have the right to appeal to the High Court ...". We are in entire agreement with the sentiments expressed in the case of *Duport Steels Ltd. And Others v. Sirs And Others* [1980] 1 WLR 142 referred to by the learned judge in his grounds of judgment wherein Lord Diplock at p. 157 held:

> Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to the plain meaning because they themselves consider that the consequences of doing so would be inexpedient or even unjust or immoral ...

Issue Regarding Breach Of Natural Justice And Bias

As regards the issue of breach of natural justice and bias, the High Court had considered the non-disclosure by the DB at the request of the respondent, of the minutes of its meeting, and its refusal to reveal the names of the members of the DB who had sat and determined that there was merit in the complaint against the respondent and held that s. 114(g) of the Evidence Act was applicable against the DB.

Section 93(3) of the Legal Profession Act provides that the DB shall consist of the following:

(a) the Chairman of the DB appointed by the Chief Justice;

(b) the President of the Bar Committee with the Vice President as his alternate; and

(c) 15 practitioner members of not less than 15 years standing appointed by the Chief Justice.

However, under r. 4(1) of the Legal Profession (DB) (Procedure) Rules 1994, the President of the Bar Council or his alternate is disqualified to be a member of the DB for the purposes of the quorum where the Bar Council is the complainant.

It is not disputed that the Bar Council is the complainant in this case. The President of the Bar Council himself had signed the letter of complaint as evidenced in the letter at p. 118 of the Appeal Record Vol. I.

When the respondent requested from the DB the names of the members of the DB who had sat and decided to institute the Investigating Tribunal, the DB refused to entertain his request by saying that it was not in a position to disclose the same. Surely such a reply would arouse strong suspicion as to why the DB refused to disclose the names as requested by the respondent. Yet in the case of *Ngeow Yin Ngee v. Majlis Peguam Malaysia* [2004] 5 CLJ 467 at the request of the appellant the DB had in fact furnished the appellant (lawyer) with the names of the DB members who sat in the DB meeting after the DB had made the order against the appellant. Why then could the DB have not provided the same in the instant appeal when requested by the respondent? Therefore we think the High Court was not in error when it invoked s. 114(g) of the Evidence Act against the appellant under the circumstances, thus raising the presumption that the President of the Bar Council or his alternate was present at the said meeting.

For the above reasons, we agree with the learned counsel for the respondent that the said decision of the Disciplinary Board was therefore appealable to the High Court under s. 103E of the Legal Profession Act. As such we find no reason to interfere with the findings of the court below. Accordingly, this appeal is dismissed with costs to the respondent. Deposit to the respondent towards account of taxed costs. My learned brother P.S. Gill, FCJ and learned sister Rahmah Hussain FCJ have read this judgment in draft and have expressed their concurrence respectively.